

SPECIAL BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

HEARING ROOM A  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 5, 2002

10:00 a.m.

Reported By:

Valorie Phillips

Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Robert A. Laurie, Acting Chairman

James Boyd

Robert Pernell

Arthur H. Rosenfeld

STAFF PRESENT

Steve Larson, Executive Director

Bob Therkelsen, Chief Deputy Director

Garret Shean, Hearing Officer

Arlene Ichien

Bob Eller

Lisa DeCarlo

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

SECRETARIAT

Betty McCann

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 ACTING CHAIRMAN LAURIE: We will call  
3 the Special Meeting of the California Energy  
4 Commission to hear the special calendar.

5 If you could please rise for our pledge  
6 to the flag. Commissioner Pernell, could you lead  
7 the pledge, please.

8 COMMISSIONER PERNELL: Certainly.  
9 (Thereupon, the Pledge of Allegiance  
10 was recited in unison.)

11 ACTING CHAIRMAN LAURIE: Good morning.  
12 Any additions or modifications to the agenda, Mr.  
13 Larson?

14 EXECUTIVE DIRECTOR LARSON: No. No,  
15 sir.

16 ACTING CHAIRMAN LAURIE: Any additions  
17 or modifications to the agenda?

18 EXECUTIVE DIRECTOR LARSON: I'm sorry.

19 ACTING CHAIRMAN LAURIE: Thank you.

20 We at the Consent Calendar.

21 MS. McCANN: Mr. Chair.

22 ACTING CHAIRMAN LAURIE: Yes, ma'am.

23 MS. McCANN: We do need to add in the  
24 item that's on the second page, and we do need to  
25 take a vote on that, for the Consent Calendar.

1                   ACTING CHAIRMAN LAURIE: Okay. And so  
2 we are adding that item. The Item 1-b, under  
3 Consent, is the Co-Op Energy Symposium. Is this  
4 sponsorship of the Co-Op Energy Symposium?

5                   MS. McCANN: Yes, sir.

6                   ACTING CHAIRMAN LAURIE: Okay. And  
7 there is a request to add that to the agenda. Who  
8 is the interested party that's desiring to add  
9 that? Mr. Larson, do you know?

10                  EXECUTIVE DIRECTOR LARSON: No, I don't.

11                  ACTING CHAIRMAN LAURIE: Okay. The  
12 matter can be added to the --

13                  EXECUTIVE DIRECTOR LARSON: There is  
14 someone in the back --

15                  MS. McCANN: It's Mary Ann Miller, Mr.  
16 Chair. It's Mary Ann Miller.

17                  ACTING CHAIRMAN LAURIE: Okay. The  
18 matter can be added to the agenda if there is good  
19 cause as to why it could not appear on the agenda  
20 before it was printed. Does anybody have the  
21 facts to establish that?

22                  Okay. Let us hold that. We need to  
23 make a finding that good cause appears to add  
24 before we vote, so we will table that item, and  
25 we'll wait to get information on it before we

1 adjourn today.

2 MS. McCANN: Mr. Chair, it was an  
3 oversight on the Secretariat's part. It should  
4 have been added.

5 ACTING CHAIRMAN LAURIE: The information  
6 is that there was administrative error as to the  
7 reason for its non-appearance. With that in mind,  
8 we need a unanimous vote to add it to the agenda.  
9 Is there a motion to add Item 1-b to the Consent  
10 Calendar?

11 COMMISSIONER ROSENFELD: I move we add  
12 1-b.

13 ACTING CHAIRMAN LAURIE: Is there a  
14 second?

15 COMMISSIONER PERNELL: Second.

16 ACTING CHAIRMAN LAURIE: All in favor,  
17 please say aye.

18 (Ayes.)

19 ACTING CHAIRMAN LAURIE: Opposed?

20 Item 1-b is added to Consent. Is there  
21 a motion to approve the Consent Calendar?

22 COMMISSIONER PERNELL: Mr. Chairman, I  
23 will move the Consent Calendar, with the addition.

24 COMMISSIONER ROSENFELD: Second.

25 ACTING CHAIRMAN LAURIE: Moved and

1 second to approve Consent.

2 Discussion?

3 All in favor, please say aye.

4 (Ayes.)

5 ACTING CHAIRMAN LAURIE: Opposed?

6 Motion passes unanimously. Thank you.

7 Item 2. GWF Henrietta Peaker Project.

8 Consideration and possible adoption of the  
9 Presiding Member's Proposed Decision recommending  
10 approval of GWF Energy's Application for  
11 Certification of the 91.4 megawatt Henrietta  
12 Peaker Project.

13 Commissioner Rosenfeld, you are  
14 Presiding Member, sir.

15 COMMISSIONER ROSENFELD: I'd like to  
16 hear from Mr. Shean.

17 HEARING OFFICER SHEAN: Good morning,  
18 Commissioners. I'm Garret Shean, the Hearing  
19 Officer on the Henrietta Peaker Project AFC.

20 We have before you this morning the  
21 Presiding Member's Proposed Decision. I can  
22 indicate to you that it is not what we would  
23 technically and legally call a Revised Proposed  
24 Decision, since the changes to the PMPD are so  
25 minor and not substantive, it would not constitute

1 a revision.

2 I will also indicate that since our  
3 Thursday meeting, at which we took comments on the  
4 PMPD, the Staff and the Applicant have agreed to  
5 the inclusion of the boilerplate milestones  
6 language, which have been included in some of last  
7 year's decisions, so long as it does not include  
8 the penalties provision,m and the parties have  
9 agreed to that. The Committee will accept that as  
10 a change to the PMPD.

11 ACTING CHAIRMAN LAURIE: Okay. Can we  
12 address that specific language at this point? Are  
13 you prepared to do that, Mr. Eller?

14 MR. ELLER: We were hoping to revise the  
15 language that's currently in our comments on the  
16 PMPD, pages 12 and 13, to remove any of the  
17 forfeiture language. This has been something  
18 we've been discussing literally as this meeting  
19 started, so we would hope to have some language  
20 finalized this afternoon. But the language in its  
21 full form has been available to the public and to  
22 the Commission, in our comment.

23 ACTING CHAIRMAN LAURIE: Okay. Because  
24 this language might be sensitive and will deal  
25 with an enforcement issue, we'd like to have the



1 language before the vote on the project. So  
2 you'll have some minutes to think about it.

3 I also, on page 12, the boilerplate  
4 language dealing with the construction milestones.  
5 The language in the second paragraph says,  
6 milestones and method of verification must be  
7 established and agreed upon by the project owner  
8 and the CPM no later than 30 days after project  
9 approval, the date of docketing. If this deadline  
10 is not met, the CPM will establish the milestones.

11 Let me express concern about that  
12 language, because basically that says A and B are  
13 going to enter into negotiations, and if B doesn't  
14 like it, A is going to do it unilaterally. That's  
15 not what the deal is. Either there is negotiation  
16 or the CPM imposes, so let's be real about it.

17 Is it the intent that there be  
18 negotiations over the milestone, or is there  
19 suggestions that it be imposed?

20 MR. ELLER: I believe that's a piece of  
21 language that we had hoped to take a look at. I  
22 believe the last sentence, if this deadline is not  
23 met will -- the CPM will establish, should be  
24 removed.

25 ACTING CHAIRMAN LAURIE: Okay. I, for

1       one, feel comfortable with the idea if you can't  
2       agree to the milestones, then it's brought back to  
3       somebody for further discussion.

4               COMMISSIONER PERNELL:  Mr. Chairman.

5               ACTING CHAIRMAN LAURIE:  Commissioner  
6       Pernell.

7               COMMISSIONER PERNELL:  I'm having some  
8       difficulty following this.  Are you looking at the  
9       -- what are we looking at on page --

10              ACTING CHAIRMAN LAURIE:  My --

11              COMMISSIONER PERNELL:  -- on page 12,  
12       that doesn't have what you're reading.

13              ACTING CHAIRMAN LAURIE:  Do the  
14       Commissioners have the comments, the Staff  
15       comments?

16              HEARING OFFICER SHEAN:  Not through us.  
17       Since this was an addition this morning, we do not  
18       -- we did not provide it.

19              ACTING CHAIRMAN LAURIE:  Yeah.  My  
20       apologizes, Commissioner Pernell.  I was given a  
21       copy of Staff comments which contains the proposed  
22       language, since the -- this language is not  
23       included in the PMPD.

24              COMMISSIONER PERNELL:  Right.  And I  
25       don't think any of the other Commissioners have

1       that. And if we can get a copy of it, perhaps we  
2       could follow the proceedings more closely.

3               COMMISSIONER ROSENFELD: Otherwise,  
4       we're confused.

5               HEARING OFFICER SHEAN: Mr. Chairman,  
6       there is a matter that probably needs to be  
7       addressed with regard to comments that we received  
8       yesterday via e-mail from the California Rural  
9       Legal Assistance Foundation. If perhaps I address  
10      those, and we'll give the Staff an opportunity to  
11      do a reproduction of the material that you're  
12      asking about, and get it to you. And then we can  
13      go back to this.

14              ACTING CHAIRMAN LAURIE: Okay. What we  
15      will do is we'll go through all the comments. My  
16      preference is, it's certainly up to the Committee,  
17      but my preference is not to engage in further  
18      discussion on this issue until we have a copy of  
19      the language in front of us. If we have to take a  
20      break for a few minutes, that's fine.

21              MR. ELLER: We'll have copies down  
22      shortly.

23              ACTING CHAIRMAN LAURIE: Okay. Thank  
24      you. Mr. Shean.

25              HEARING OFFICER SHEAN: Let me just

1 indicate that yesterday I received via e-mail  
2 comments from the California Rural Legal  
3 Assistance Foundation, the Center on Race, Poverty  
4 and the Environment. The CRLA has not been a  
5 party to the proceedings. They have not  
6 participated in the proceedings prior to this  
7 written comment. And in a seven-page letter, the  
8 CRLA basically says the following, that the no  
9 project alternative is feasible, that the  
10 cumulative air quality impacts analysis is  
11 inadequate, and that there are environmental  
12 justice and air quality impacts.

13 I'll just go over these briefly so that  
14 we can address the public comments.

15 As far as the no project alternative,  
16 the Committee found that the project is preferable  
17 to the no project alternative, and believes that  
18 it is. This particular project is north of Path  
19 15, it is going to be very helpful in the summer  
20 of 2002 and thereafter, with regard to having  
21 peaking power and other perhaps intermediate and  
22 peaking power available north of Path 15. And  
23 until Path 15 is addressed by other authorities,  
24 this is a good thing.

25 It also will be, the project will be

1       online in the summer of 2002, and there is reason  
2       to believe that the added megawattage, about 91  
3       megawatts, is going to be valuable to the state's  
4       resources for the summer of 2002.

5               The Applicant had listed, and the Staff  
6       has concurred, that there are some local economic  
7       benefits to Kings County, Fresno County, and the  
8       surrounding area, and the Committee is in accord  
9       with that and believes that there will be. In  
10      addition, there will be some employment benefits,  
11      and that fundamentally, a no project alternative  
12      is not preferable to the project, and that is the  
13      finding of the Committee.

14             With regard to cumulative air quality  
15      impacts. The CRLA essentially argues that the  
16      analysis performed by the Commission, and  
17      therefore, since we rely upon the local air  
18      district, the district's analysis was  
19      inappropriately limited geographically, and that  
20      rather than take into account the areas  
21      essentially near, or within six miles of the  
22      project, that we should have included the entire  
23      San Joaquin Valley Air Basin. And they cite the  
24      Kings County Farm Bureau versus City of Hanford  
25      case which, interestingly enough, deals with a

1 prior GWF project which was a coal-fired project.  
2 Coal and coke.

3 However, that particular project and the  
4 findings of the court were probably largely based  
5 upon the fact of the transportation of the fuels  
6 to the site, which involved other potential air  
7 quality impacts that do not occur under these  
8 circumstances, where we have natural gas piped to  
9 the project, through an underground pipeline.

10 I should say that in terms of our  
11 evaluation of air quality impacts, we essentially  
12 do two things. We look at the localized impacts,  
13 as well as the more regional impacts. And there  
14 is a different regulatory regime which is  
15 applicable to each. It's very clear, I think, to  
16 us, and our practice at the Commission now for  
17 several years, seems to demonstrate that if we do  
18 the combined air quality and public health impact  
19 within a radius of six miles of the proposed  
20 project, we are able to capture the potential  
21 impacts to public health that will arise from both  
22 criteria and non-criteria pollutants.

23 However, that analysis does not address  
24 what we would term as more regional impacts, most  
25 particularly from, let's say, ozone, which arises

1 from the interaction in the atmosphere of certain  
2 pollutants and sunlight. This effect, and its  
3 effect on public health as a more regional matter,  
4 is addressed essentially through the new source  
5 review rules, which are laid down by the federal  
6 EPA, and then are enforced through each of the air  
7 district rules, that deal with, if you will, a  
8 programmatic approach to the control of this kind  
9 of pollution, and deal with the impact to public  
10 health.

11 In this particular case, the Commission  
12 has addressed both the localized impacts and the  
13 more regional impacts in the manner that I have  
14 just described, and has found, as far as the  
15 public health impacts within the six-mile radius,  
16 that there are none. All the thresholds are well  
17 below the one in a million that would be  
18 considered to be significant, I mean far below.  
19 And that to the extent that there were potential  
20 air quality impacts on a regional basis, that the  
21 Applicant has provided the necessary offsets to  
22 assure that it complies with all of the new source  
23 review rules that are promulgated by the district,  
24 with the oversight of the EPA. And, in fact, the  
25 EPA has looked at this.

1                   Let me address now the environmental  
2           justice issue, essentially, which is related to  
3           the use of a six-mile radius to analyze potential  
4           impacts to minority populations or populations  
5           that fall below a certain income threshold.

6                   Again, I believe that the Commission's  
7           approach to this embraces all of the concepts of  
8           the Federal Executive Orders, as well as the,  
9           essentially the precedents that the Commission has  
10          established for assuring that the construction and  
11          operation of any of the facilities that it  
12          licenses do not create a disproportionate impact  
13          upon minorities and low income population.

14                   This analysis for our environmental  
15          justice portion of the proposed decision has  
16          reached out to the farthest potential impact of  
17          public health, which is essentially, if you will,  
18          the foremost concern with regard to the kind of  
19          environmental justice impacts. And that there are  
20          no direct impacts to such populations and that  
21          would require direct mitigation. To the extent  
22          that mitigation has been applied it will reduce  
23          all the impacts of this facility to less than  
24          significance.

25                   And, with regard to more regional type



1 of impacts, the imposition of a requirement for  
2 offsets satisfies the new source review rule, and,  
3 at least in a programmatic sense, addresses and  
4 mitigates to a level of insignificance the  
5 potential health impacts from the emissions of the  
6 project. This may be, and we have had this  
7 continually argued in proceedings before the  
8 Commission that there are programmatic limitations  
9 or, let me say programmatic limitations to the new  
10 source review rules, in terms of whether or not  
11 you're dealing with a localized or a regional  
12 impact.

13 I think that we have found is that the  
14 federal air quality law and the California air  
15 quality law have addressed this the best they can,  
16 and generally, if there's an argument about the  
17 result of that, the question of whether it should  
18 be done programmatically or some different way,  
19 since the legislatures, of course, have spoken,  
20 that this is entirely appropriate. We think that  
21 the Commission's approach to this is likewise  
22 appropriate.

23 And that, I think, addresses in --

24 ACTING CHAIRMAN LAURIE: Mr. Shean, are  
25 all of your comments consistent with the Presiding

1 Member's Proposed Decision and the facts and  
2 conclusions contained therein?

3 HEARING OFFICER SHEAN: Yes.

4 ACTING CHAIRMAN LAURIE: Thank you.

5 Any questions of Mr. Shean?

6 Commissioner Pernell.

7 COMMISSIONER PERNELL: Yes. Mr.

8 Chairman, the -- Mr. Shean, have the air quality  
9 districts signed off on this project?

10 HEARING OFFICER SHEAN: Yes, it has. As  
11 a matter of fact, the air quality district  
12 initially prepared a presiding -- I beg your  
13 pardon, a Preliminary Determination of Compliance.  
14 Based upon comments of the Staff and others, they  
15 had issued a Final, I guess a Final DOC, and then  
16 performed a revision to that Final DOC with a  
17 public comment period on that revision.

18 So there has been both substantive work  
19 by the district that was quite complete, and  
20 addressed the issues that the Staff and others  
21 had, and it has been subject to the appropriate  
22 public comment period.

23 COMMISSIONER PERNELL: And as it relates  
24 to EJ, environmental justice, the federal  
25 recommendation is a six-mile radius, and we've

1       been using that consistently throughout these  
2       licensing processes?

3                   HEARING OFFICER SHEAN:  I can't say that  
4       the Federal Executive Orders specified the six-  
5       mile radius.  I think what the Commission has  
6       done, because I helped participate in some of this  
7       years ago, when this first became a significant  
8       issue, at least for me in the San Francisco Energy  
9       Project in Hunter's Point, and developed at that  
10      point some guidelines at the Commission as to what  
11      we were going to do.  That, the six miles  
12      represented, because of the science of the  
13      analysis of public health impacts, that a  
14      reasonable distance plus a buffer to capture any  
15      of the potential health impacts of a project that  
16      would be sited by the Energy Commission.

17                   COMMISSIONER PERNELL:  But the six-mile  
18      radius is something that we've used in the past,  
19      in terms of analysis for EJ?

20                   HEARING OFFICER SHEAN:  Over and over  
21      and over, yes.

22                   COMMISSIONER PERNELL:  And then my final  
23      question, and this may be for the Center on Race  
24      and Poverty, but they state in their  
25      communication, on the environmental justice, that

1 the population is 51.6 percent people of color,  
2 and over 50 percent low income. Do your analysis  
3 reflect that?

4 HEARING OFFICER SHEAN: I would indicate  
5 that in the Staff's Assessment there is a map, if  
6 you will, there are spotty -- first of all, this  
7 is a largely rural area that's dominated by  
8 agriculture, but for the presence of the Lemoore  
9 Naval Air Station approximately a mile to a mile  
10 and a quarter north of the project. There is no  
11 population around there in any close proximity to  
12 the facility, including the six miles. It's very  
13 sparsely populated, other than the base housing.

14 And to the extent there is base housing,  
15 this analysis includes that, and that there are  
16 pockets of population that do exceed 50 percent,  
17 as for both reference of minorities, as well as  
18 for, I believe, for low income.

19 COMMISSIONER PERNELL: I guess my  
20 question, or -- my conclusion of the statement is  
21 that, you know, 100.1 -- 101.6 percent of people  
22 of color or people who have challenged income  
23 levels in the entire analysis. So, I mean, that's  
24 a question perhaps I can ask the person who wrote  
25 this.

1                   HEARING OFFICER SHEAN: Okay. I don't  
2 believe that these are statistically additive.  
3 They're -- I beg your pardon, they're separate  
4 populations, if you will, so that, if I understood  
5 you to --

6                   COMMISSIONER PERNELL: Well, that even  
7 confuses me more, because we're over 100 percent.

8                   HEARING OFFICER SHEAN: Well, it's --

9                   ACTING CHAIRMAN LAURIE: Well, so you  
10 can't add them.

11                  COMMISSIONER PERNELL: They're not --

12                  HEARING OFFICER SHEAN: That's why you  
13 can't add them.

14                  COMMISSIONER PERNELL: Right. They're  
15 two different statistics. Okay. Thank you, Mr.  
16 Chairman.

17                  ACTING CHAIRMAN LAURIE: Any other  
18 questions of Mr. Shean?

19                  COMMISSIONER BOYD: Mr. Chairman.

20                  ACTING CHAIRMAN LAURIE: Commissioner  
21 Boyd.

22                  COMMISSIONER BOYD: Maybe I'd just like  
23 to restate what I heard and have Mr. Shean  
24 reaffirm that it's along the lines of the  
25 discussion that Commissioner Pernell started.

1           As I heard your answer to the issues  
2       with regard to public health impacts within the  
3       six-mile radius conventionally used, or used as  
4       the convention by the Staff for analysis, that  
5       it's been found that there would not be an adverse  
6       air quality impact from any plume from this  
7       particular facility that would fall within that  
8       six-mile radius. And thus, we don't have a public  
9       health issue in the general air quality scope of  
10      things, nor do we have an air quality issue when  
11      you switch over to the environmental justice  
12      question, and analyze whether or not there's an  
13      impact on people of color or economically  
14      disadvantaged folks.

15           I heard you say that the -- and the  
16      document states that, and the air quality  
17      analysis, and that analysis also done by the  
18      district, find no adverse impact within that six-  
19      mile radius; thus, each question is -- has been  
20      answered. Is that correct?

21           HEARING OFFICER SHEAN: That is correct.

22           COMMISSIONER BOYD: Secondly, the  
23      cumulative impact aspects of their letter relate  
24      to those emissions that are probably driven high  
25      into the atmosphere and accumulate in the Central

1 Valley, and the local district has found that this  
2 is not a problem for their attainment plan in  
3 that, in the boundaries of their responsibility;  
4 is that correct?

5 HEARING OFFICER SHEAN: I won't say that  
6 they have found that it's not their  
7 responsibility, but that it is a shared  
8 responsibility with not only this district, by  
9 districts, if you will, that are upwind and  
10 districts that are downwind. This is, as a --  
11 this is a regional issue, and we run into this no  
12 matter which region we're in. We -- it occurred  
13 in San Jose with the Bay Area Air Quality  
14 Management District, it occurred on --

15 COMMISSIONER BOYD: Well, but let me  
16 interrupt you to say that the San Joaquin Valley  
17 Air Quality Management District encompasses the  
18 entire San Joaquin Valley. It's the largest  
19 district in state. So there's probably not a lot  
20 of question of pollution leaving this district,  
21 and for purposes of this particular analysis I  
22 think we can confine ourselves to the boundaries  
23 of that district. And I'm just saying that -- I'm  
24 just repeating the fact that the district has  
25 found that this does not exacerbate their existing

1 problem, which is already somewhat exacerbated.

2 HEARING OFFICER SHEAN: I would like to  
3 phrase it a little bit differently --

4 COMMISSIONER BOYD: All right.

5 HEARING OFFICER SHEAN: -- which is, is  
6 that in recognition of the problem that this is  
7 regional, and that the sources of pollution, and  
8 given the topography of that district, it's  
9 essentially ringed by mountains, certainly once  
10 you get down to the Bakersfield area it is a bowl.  
11 And that the way to address this programmatically  
12 and regionally is to have offsets that reduce the  
13 ozone within that bubble, and that that is the way  
14 programmatically to assure the protection of the  
15 public health.

16 COMMISSIONER BOYD: And the district has  
17 found that to be the case here.

18 HEARING OFFICER SHEAN: That is correct.

19 COMMISSIONER BOYD: That's --

20 HEARING OFFICER SHEAN: And the  
21 Applicant --

22 COMMISSIONER BOYD: -- I'm just trying  
23 to get that in the record.

24 HEARING OFFICER SHEAN: -- has provided  
25 the necessary offsets.



1 COMMISSIONER BOYD: Thank you.

2 ACTING CHAIRMAN LAURIE: Any other  
3 questions? Thank you, Mr. Shean.

4 Does the Applicant wish to comment at  
5 this time?

6 MR. GRATTAN: No, we agree with the  
7 Hearing Officer, and if there are any questions of  
8 us we'll answer them. I couldn't, certainly  
9 couldn't have said it better.

10 ACTING CHAIRMAN LAURIE: Okay. Would  
11 you care to identify some of the representatives  
12 who are present and are in a position to respond?

13 MR. GRATTAN: Certainly. I think first  
14 I have to say that the -- I'm John Grattan, and I  
15 made the last statement, and I'm counsel to GWF  
16 Energy Systems, LLC.

17 Doug Wheeler, who is the Vice President  
18 for Business Development, is next to me. Dwayne  
19 Nelson, who is the CEO, is seated in the audience.  
20 Dave Stein, who prepared the application and  
21 responded on behalf of URS for the Applicant, is  
22 here to answer any technical questions. And Hal  
23 Moore is, I could go -- Hal Moore is the Director  
24 of Engineering from GWF. Mark Kehoe is the  
25 Director for Environmental and Safety issues, and

1 Mark -- Dave, I blew it, David Kehoe, who I --

2 MR. KAZELL: David Kazell, Engineering  
3 Supervisor.

4 MR. GRATTAN: Okay.

5 ACTING CHAIRMAN LAURIE: Thank you, Mr.  
6 Grattan.

7 HEARING OFFICER SHEAN: If I may, Mr.  
8 Chairman, I'm prepared at this point to address  
9 the milestones matter, and give you the deletions  
10 which we believe will remove the penalty portions,  
11 or forfeiture portions of the --

12 ACTING CHAIRMAN LAURIE: Thank you. Mr.  
13 Eller, are you prepared to discuss it at this  
14 time?

15 MR. ELLER: I am, Commissioner. Thank  
16 you.

17 ACTING CHAIRMAN LAURIE: Mr. Shean.

18 HEARING OFFICER SHEAN: All right.

19 ACTING CHAIRMAN LAURIE: And we're  
20 turning to page 12 of Staff Comments, is that the  
21 idea?

22 HEARING OFFICER SHEAN: We are. On page  
23 12, in approximately the middle of the page, below  
24 the banner heading called Construction Milestones,  
25 there is the paragraph that begins, milestones and

1 the method of verification must be established, et  
2 cetera. In order to remove the -- let me say what  
3 is proposed is the deletion of the sentence, "If  
4 this deadline is not met, comma, the CPM will  
5 establish the milestones."

6 On the following page, the first full  
7 paragraph, beginning, "The CPM will negotiate the  
8 above cited pre-construction", et cetera. Again,  
9 the last sentence of that paragraph, beginning,  
10 "Otherwise failure to meet milestone dates without  
11 a finding of good cause is considered cause for  
12 possible forfeiture of the certification or other  
13 penalties." That sentence would be removed.

14 ACTING CHAIRMAN LAURIE: Now, with the  
15 deletion of this language, the milestones remains  
16 a condition of the project; is that correct?

17 HEARING OFFICER SHEAN: That would be  
18 correct.

19 There's one more matter to delete. On  
20 that same page, 13, the bottom paragraph and the  
21 numbered items, beginning, "If the project owner  
22 fails to meet one or more of the established  
23 milestones" all the way through to the conclusion  
24 of item number 3, which is, "Recommend after  
25 consultation with the Siting Committee, that the

1 Commission issue a finding that the project owner  
2 has forfeited the project certification."

3 That, and I guess we should go over to  
4 the following, the following page, the sentence,  
5 "The project owner has the right to appeal a  
6 finding of no good cause or any recommended  
7 remedial action to the full Commission."

8 With the deletion of those sentences and  
9 paragraphs, the Committee concurs with the  
10 proposal of the Applicant and as -- actually, it's  
11 of the Staff with the concurrence of the  
12 Applicant, for the inclusion of what may become  
13 new and modified boilerplate for the Commission  
14 for the milestones.

15 ACTING CHAIRMAN LAURIE: Thank you.

16 Mr. Grattan, on behalf of your client,  
17 have you reviewed the proposed conditions to the  
18 project, and, on behalf of your client, are you  
19 prepared to indicate concurrence with such  
20 conditions including the milestones as just  
21 stated?

22 MR. GRATTAN: Yes, we have. And we  
23 agree. And for the record, we agree with the  
24 deletion of the last sentence of the second  
25 paragraph under Construction Milestones; the last

1 sentence on page 13 of the first full paragraph,  
2 beginning with "Otherwise"; and with, also on page  
3 13, with number 3 at the bottom of the page,  
4 "Recommend that after consulting that the  
5 Commission may issue a finding that the owner has  
6 fortified the project" -- "forfeited the project",  
7 and --

8 HEARING OFFICER SHEAN: It starts from  
9 here.

10 MR. GRATTAN: Oh, you're going to delete  
11 the whole -- okay. The whole thing. That's even  
12 better.

13 COMMISSIONER BOYD: For who?

14 MR. GRATTAN: For -- for us.

15 HEARING OFFICER SHEAN: I think we can  
16 say for everyone.

17 MR. GRATTAN: And that will be the last  
18 full paragraph on page 13 and continuing to 14.

19 ACTING CHAIRMAN LAURIE: Thank you.

20 Does Staff have any additional comments  
21 at this point, Mr. Eller?

22 MR. ELLER: We have none, sir.

23 ACTING CHAIRMAN LAURIE: Thank you. Let  
24 me ask, before I go to the public, Mr. Grattan, do  
25 you have additional comment?

1                   MR. GRATTAN: We have one, I don't know  
2                   if this is the appropriate time. We had one  
3                   textual change that Staff and I agree should have  
4                   been incorporated.

5                   ACTING CHAIRMAN LAURIE: Why don't you  
6                   bring that up at this point, please.

7                   MR. GRATTAN: That's on page 166, under  
8                   the heading of Wastewater. The second full  
9                   paragraph, one, two, three, four, five, six, seven  
10                  lines down. There's a sentence beginning -- I'll  
11                  identify the sentence and then give the  
12                  recommended changes. The sentence begins with,  
13                  "Stormwater from parking areas which are paved for  
14                  vehicular use needs to be collected and treated to  
15                  remove contaminants using the oil-water separator  
16                  and reverse osmosis filter treatment."

17                  We are proposing to revise that sentence  
18                  to add the word "tested" after "collected", and  
19                  add before the word "treated", "if contaminated,  
20                  treated to remove". Okay. And, the word "reverse  
21                  osmosis" should be deleted so that it would  
22                  remain, the remaining would be, excuse me, "and  
23                  reverse osmosis," would be "filter treatment".  
24                  Not osmosis filter treatment.

25                  ACTING CHAIRMAN LAURIE: Comments, Mr.

1       Eller?

2                   MR. ELLER:  We're unclear where your  
3       reference was, again, on -- we're looking at page  
4       166?

5                   MR. GRATTAN:  Okay, page 166, under  
6       Wastewater, second full paragraph, there's a  
7       little block that says WQ, and there's a sentence,  
8       actually it's the last sentence, it's four lines  
9       up from the bottom.  "Stormwater" --

10                  MR. ELLER:  Stand by.  We're not quite  
11       on the same page here.  Okay.

12                  MR. GRATTAN:  Literally on the same  
13       page.

14                  HEARING OFFICER SHEAN:  Go ahead, Mr.  
15       Grattan.

16                  MR. GRATTAN:  Have you identified the  
17       sentence?

18                  HEARING OFFICER SHEAN:  I'm not sure.

19                  MS. DeCARLO:  No.  Is this the revised  
20       version of the PMPD that you're referencing?

21                  HEARING OFFICER SHEAN:  I think, let me  
22       just say I believe Mr. Grattan is working off what  
23       was available out on the counter.

24                  MR. GRATTAN:  That's --

25                  HEARING OFFICER SHEAN:  And --

1 MR. GRATTAN: -- that's true.

2 HEARING OFFICER SHEAN: -- he should not  
3 be. I recall this sentence.

4 MR. GRATTAN: That's true.

5 HEARING OFFICER SHEAN: It was, and in  
6 fact, Mr. Grattan dictated it while we were at the  
7 Thursday Committee Conference, and all of the  
8 language that we have that deal with this type of  
9 wastewater is now being treated consistent -- I  
10 don't want to use the word -- is now being made  
11 consistent with the concept that the -- okay.

12 MR. GRATTAN: Okay.

13 HEARING OFFICER SHEAN: Okay. The  
14 concept that stormwater runoff --

15 MR. GRATTAN: In the final version --  
16 yeah. In the final version, I'm sorry.

17 HEARING OFFICER SHEAN: -- will be  
18 tested and then treated, if necessary.

19 ACTING CHAIRMAN LAURIE: And that is the  
20 language in the final version of the PMPD.

21 HEARING OFFICER SHEAN: That is correct.

22 ACTING CHAIRMAN LAURIE: Thank you. Any  
23 other comments from Staff?

24 Let me call upon members of the public.  
25 Is there any member of the public that wishes to



1 comment, Ms. Mendonca?

2 PUBLIC ADVISER MENDONCA: Could you  
3 verify the spelling of those names for me?

4 HEARING OFFICER SHEAN: And I would like  
5 to indicate for the record that we have  
6 established a teleconference link for this  
7 hearing, it is in place, and there have been no  
8 calls.

9 ACTING CHAIRMAN LAURIE: Thank you.

10 PUBLIC ADVISER MENDONCA: Thank you, Mr.  
11 Chairman. I'm Roberta Mendonca, the Public  
12 Adviser, and my office has not received any  
13 information or communication this morning that I  
14 would be at this time conveying to you.

15 Thank you.

16 ACTING CHAIRMAN LAURIE: Thank you.

17 Mr. Shean, we do have members of the  
18 public on the line?

19 HEARING OFFICER SHEAN: We do not.

20 ACTING CHAIRMAN LAURIE: We do not.

21 Thank you.

22 Bring it back to the Commission.

23 COMMISSIONER PERNELL: I think Mr.

24 Grattan has -- is raising his glasses.

25 MR. GRATTAN: Yeah. I think this is the

1 last opportunity. As we come hopefully to a close  
2 of this, we would like to thank the Staff and the  
3 Commission very much. This has been, in 20-odd  
4 years before here, this has been the -- this has  
5 been the best project, this has been the simplest  
6 project, and this has received the most  
7 cooperation of the local community, Staff, and  
8 Commission. And, thanks.

9 ACTING CHAIRMAN LAURIE: I'm sure it's  
10 because of your representation, Mr. Grattan.

11 HEARING OFFICER SHEAN: I would like to  
12 echo those sentiments. I think from both the  
13 Staff and the Applicant, they've done yeoman  
14 service in this, and have helped get it through in  
15 very rapid time.

16 ACTING CHAIRMAN LAURIE: Let me remind  
17 the participants that we haven't voted yet.

18 (Laughter.)

19 ACTING CHAIRMAN LAURIE: Bring it back  
20 to the Commission. Commissioner Rosenfeld, what's  
21 your pleasure, sir?

22 COMMISSIONER ROSENFELD: I'm ready to  
23 move the Presiding Member's Proposed Decision be  
24 adopted.

25 ACTING CHAIRMAN LAURIE: With the

1 modifications --

2 COMMISSIONER ROSENFELD: Of course.

3 ACTING CHAIRMAN LAURIE: -- as discussed  
4 at present.

5 Is there a second to the motion?

6 COMMISSIONER PERNELL: Mr. chairman, I  
7 would second the motion. I have a -- I would like  
8 to speak to the question, please.

9 ACTING CHAIRMAN LAURIE: Yes, sir.

10 COMMISSIONER PERNELL: Just a couple, so  
11 I can be clear on the issue of the milestones.  
12 And let me turn to Mr. Grattan, representing the  
13 Applicant.

14 Mr. Grattan, what is the timetable for  
15 construction of this project?

16 MR. GRATTAN: : We're going to begin  
17 construction as soon as this decision is docketed.  
18 Which means later today, if we get it docketed  
19 today.

20 COMMISSIONER PERNELL: And that is why  
21 there is no need for the milestones, because you  
22 intend to begin construction right away.

23 MR. GRATTAN: Yeah. I would phrase it a  
24 different way, from the Applicant's perspective,  
25 that the -- because we are going to begin

1 construction, because we're going to construct  
2 this in a very rapid time, the Applicant wouldn't  
3 question the Commission's authority that would  
4 impose milestones, and to impose them with a  
5 forfeiture penalty.

6 COMMISSIONER PERNELL: Okay. And then  
7 what is the completion date, if you have one, if  
8 you start as soon as it's docketed, which is --

9 MR. GRATTAN: July of this year.

10 COMMISSIONER PERNELL: Thank you, Mr.  
11 Chairman.

12 ACTING CHAIRMAN LAURIE: Anymore  
13 comments, questions, on the motion?

14 All in favor of the motion, please say  
15 aye.

16 (Ayes.)

17 ACTING CHAIRMAN LAURIE: Opposed?

18 Motion passes unanimously, four to  
19 nothing.

20 Congratulations, gentlemen. Looking  
21 forward to your project. And thank you, Garret.

22 We're at Committee Reports, Committee  
23 Oversight. Any Commissioner wish to offer comment  
24 at this point?

25 Seeing none, Chief Counsel's Report.

1                   Executive Director's Report.  Mr.  
2                   Therkelsen.

3                   CHIEF DEPUTY DIRECTOR THERKELSEN:  Good  
4                   morning, Commissioners.  This is Bob Therkelsen.

5                   ACTING CHAIRMAN LAURIE:  Good morning.

6                   CHIEF DEPUTY DIRECTOR THERKELSEN:  I  
7                   wanted to let you know that there will not --

8                   ACTING CHAIRMAN LAURIE:  Why don't you  
9                   give us 30 seconds.

10                  COMMISSIONER PERNELL:  Congratulations  
11                  on your promotion.

12                  CHIEF DEPUTY DIRECTOR THERKELSEN:  Thank  
13                  you, sir.

14                  I wanted to let the Commissioners know  
15                  that there will not be a meeting session after  
16                  this Business Meeting.  We're not proposing one.  
17                  However, after the next Business Meeting, there is  
18                  a proposal to have a discussion on procedures and  
19                  protocols, working relationships, something that  
20                  was requested by Commissioner Laurie.

21                  ACTING CHAIRMAN LAURIE:  Yes.  I just --  
22                  I just sent you another note.  It turns out that  
23                  all members will not be present for March 20th, so  
24                  I sent you another note asking that it be set for  
25                  April 17th.

1 CHIEF DEPUTY DIRECTOR THERKELSEN: I'm a  
2 little slow, then. So we will schedule that,  
3 then, for the 17th. We're also setting up the  
4 discussion on the presentation on the PIER program  
5 that you requested at the last Business Meeting.  
6 Terry Surles is out today; otherwise, we would do  
7 that today. But we will schedule that then, for  
8 future, and I'll figure out the best date, then.

9 ACTING CHAIRMAN LAURIE: Thank you,  
10 Robert. Anything else?

11 CHIEF DEPUTY DIRECTOR THERKELSEN:  
12 That's it.

13 ACTING CHAIRMAN LAURIE: Ms. Mendonca,  
14 anything to report?

15 PUBLIC ADVISER MENDONCA: Thank you,  
16 nothing this morning.

17 ACTING CHAIRMAN LAURIE: Any member of  
18 the public wish to comment at this time?

19 Seeing none, any member of the  
20 Commission wish to comment at this time, regarding  
21 matters of interest?

22 If not, the meeting stands adjourned.  
23 Thank you very much.

24 (Thereupon, the Special Business Meeting  
25 was adjourned at 10:50 a.m.)

## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Special Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Meeting, nor in any way interested in the outcome of said Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of March, 2002.

VALORIE PHILLIPS

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